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# MICHIGAN LAW REVIEW

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## NOTE AND COMMENT

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TAXATION—INTERNAL REVENUE ACT.—Under the federal Revenue Act of 1921 the taxable profit or deductible loss on sales of stock, bonds and other property is the actual profit or loss, if the purchase was after February 1, 1913. Act, § 202 (a). The tax payer (other than a corporation) may, however, at his option, pay a flat tax of  $12\frac{1}{2}\%$  on his profit, provided he has held the property more than two years, and provided further that he first deducts losses on other property, and provided further, that his total tax is at least  $12\frac{1}{2}\%$  of his total net income. See Act, § 206.

If the purchase was before March 1, 1913, the taxable profit is the actual profit, but not more than the profit compared with March 1, 1913, and the deductible loss is the actual loss, but not more than the loss as compared with March 1, 1913. The following rules show the application of the Act, using \$1 as the original cost.

(1) Original cost \$1; value 1913, \$2; selling price \$3—result, \$1 taxable profit. Act § 202 (b) (1). Or the taxpayer may pay  $12\frac{1}{2}\%$  flat as stated above. Under the prior Act, trust estate stock worth \$561,798.00, March 1, 1913, and sold for \$1,280,996 in 1917 shows a taxable profit for the difference. *Merchants L. & T. Co. v. Smietanka*, 255 U. S. 509 (1921). Where a cor-

poration sells its assets in 1917 for \$6,000 more than their value March 1, 1913, plus additions, less depreciation, the \$6,000 is taxable. *Eldorado Coal Co. v. Mager*, 255 U. S. 522 (1921). Stock bought in 1912 for \$500; worth \$695 March 1, 1913, and sold for \$13,931 shows a taxable profit of \$13,236. *Goodrich v. Edwards*, 255 U. S. 527 (1921).

(2) Original cost \$1; value 1913 fifty cents; selling price \$2—result, taxable profit \$1. See § 202 (b) referring back to (a). Or the taxpayer may pay 12½% flat as stated above. Under the prior Act, stock purchased for \$231,300 in 1902; worth \$164,480 March 1, 1913; and sold for \$276,150 in 1916 showed a taxable profit of \$44,850. *Walsh v. Brewster*, 255 U. S. 536 (1921).

(3) Original cost \$1; value 1913 \$3; selling price \$2—result, no taxable profit. See § 202 (b) (3).

(4) Original cost \$1; value 1913 \$2; selling price \$2—result, no taxable profit. See § 202 (b) (3). Under the prior Act, even though on liquidation the stockholders get twice what they invested, yet if the selling price was not more than the value on March 1, 1913, there is no tax. *Lynch v. Turrish*, 247 U. S. 221 (1918).

(5) Original cost \$1; value 1913, \$2; selling price \$1—result, no taxable profit or deductible loss. See § 202 (b) referring back to (a). Under the prior Act there is no taxable profit on stock bought in 1909 and sold at the same price in 1916, even though the value was less on March 1, 1913. *Walsh v. Brewster*, 255 U. S. 536 (1921).

(6) Original cost \$1; value 1913, fifty cents; selling price 75 cents—result, no deductible loss or taxable profit. See § 202 (b) (2). Under the prior Act stock received in exchange in 1912 for stock then worth \$291,600; worth \$148,635 March 1, 1913, and sold for \$269,346 in 1916 shows no taxable profit. *Goodrich v. Edwards*, 255 U. S. 527 (1921).

(7) Original cost \$1; value 1913, fifty cents; selling price \$1—result, no deductible loss. See § 202 (b) (2) and (a).

(8) Original cost \$1; value 1913, fifty cents; selling price fifty cents—result, no deductible loss. See § 202 (b) (2).

(9) Original cost \$1; value 1913, fifty cents; selling price twenty-five cents—result, deductible loss of 25 cents. See § 202 (b) (2).

(10) Original cost \$1; value 1913, \$2; selling price 50 cents—result, deductible loss of 50 cents. See § 202 (b) referring back to (a).

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CONSTITUTIONAL LAW—TAXATION—INCOME AS PROPERTY.—The words "property" and "income" are of such character that it is difficult to confine them within the inflexible boundaries of strict definitions. It has been stated that "a tax on incomes is not a tax on property, and a tax on property does not embrace incomes." BLACK ON INCOMES, (Ed. 3) § 36. In *Raymer v. Trefry*, (Mass. 1921), 132 N. E. 190, under a statutory proceeding, complaint was made for the abatement of an income tax assessed at the rate of 2½% per annum in respect of income received as associate professor in Harvard University. The Massachusetts constitution, Amendment 44, puts